

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:15CR109
(Judge Keeley)

JOHN R. BURROWS,

Defendant.

ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION CONCERNING PLEA OF GUILTY IN FELONY CASE
(DKT. NO. 16) AND SCHEDULING SENTENCING HEARING

On November 13, 2015, the defendant, John R. Burrows ("Burrows"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a plea of GUILTY to the two count Information. After Burrows stated that he understood that the magistrate judge is not a United States District Judge, he consented to tendering his pleas before the magistrate judge. Previously, this Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

At the outset of the hearing, the magistrate judge accepted Burrows' waiver of indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure. Since the offenses charged in the Information naming Burrows are punishable by a term of imprisonment

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of greater than one year, the Court questioned him to determine if his waiver of prosecution by indictment was being freely given in a sober and knowledgeable fashion.

The magistrate judge then advised Burrows of the nature of the charges in the Information, and confirmed that he had read and reviewed them with counsel.

Next, the magistrate judge explained Burrows' constitutional right to proceed by a grand jury indictment, and that the United States is able to charge him by Information only if he waives this right. The magistrate judge explained the Grand Jury process to Burrows, following which he confirmed his understanding of this right, and that, by waiving it, the United States could proceed to charge him with the Information as though he had been indicted. Burrows then signed a Waiver of Indictment in open court, which the Court ordered to be filed.

Based upon Burrows' statements during the plea hearing and the testimony of Special Agent Jason Sommerville, the magistrate judge found that Burrows was competent to enter pleas, that the pleas were freely and voluntarily given, that he was aware of the nature of the charges against him and the consequences of his pleas, and that a factual basis existed for the tendered pleas. On

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November 16, 2015, the magistrate judge entered a Report and Recommendation Concerning Plea of Guilty in Felony Case ("R&R") (dkt. no. 16) finding a factual basis for the pleas and recommending that this Court accept Burrows' pleas of guilty to the two count Information.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. The magistrate judge further directed that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. The parties did not file any objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R, **ACCEPTS** Burrows' guilty pleas, and **ADJUGES** him **GUILTY** of the crimes charged in the two count Information.

Pursuant to Fed. R. Crim. P. 11(e)(2) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** as follows:

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1. The Probation Officer shall undertake a presentence investigation of **JOHN R. BURROWS**, and prepare a presentence report for the Court;

2. The Government and Burrows are to provide their versions of the offense to the probation officer by **December 15, 2015**;

3. The presentence report is to be disclosed to Burrows, defense counsel, and the United States on or before **February 1, 2016**; however, the Probation Officer is not to disclose the sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence report on or before **February 15, 2016**;

5. The Office of Probation shall submit the presentence report with addendum to the Court on or before **February 29, 2016**; and

6. Counsel may file any written sentencing statements and motions for departure from the Sentencing Guidelines, including the factual basis from the statements or motions, on or before **March 14, 2016**.

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The magistrate judge continued Burrows on bond pursuant to the Order Setting Conditions of Release (dkt. no. 15) entered on November 13, 2015.

The Court will conduct the sentencing hearing for the defendant on **Tuesday, March 22, 2016 at 11:30 A.M.** at the **Clarksburg, West Virginia** point of holding court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record, the defendant and all appropriate agencies.

DATED: November 30, 2015

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE